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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 UNITED STATES OF AMERICA,
7 Plaintiff,
8 v.
9 ORLANDIS WELLS, M.D.,
10 Defendant.

Case No. 2:19-cr-00216-JAD-BNW-1

ORDER

11 On September 10, 2019, Defendant Dr. Orlandis Wells (Dr. Wells) filed a Motion for
12 Return of Property. (ECF 13.) The Government responded on September 24, 2019, and Dr. Wells
13 replied on September 26, 2019. (ECF Nos. 15 & 16.)

14 **BACKGROUND**

15 This request arises as a result of a search warrant executed at Dr. Wells' office on August
16 22, 2019, which took place shortly after he was arrested for an alleged violation of 21 USC
17 841(a)(1) and (b)(1)(C). (ECF 1.) Several documents, money, and electronic devices were seized.
18 A forfeiture claim accompanies these charges. (*Id.*) Dr. Wells requests the following items be
19 returned:

- 20 1. Cellular Phone
21 2. Dell OptiPlex 7050 Computer ("Service tag" ending in J33PRPZ)
22 3. Apple Mac computer (model A148, serial number C02NH245FY0T)
23 4. \$2,360 in cash and checks made payable to Dr. Wells and to the medical practice
24 5. Billing statements
25 6. IRS documents and Department of Employment statements
26 7. Any documents with passwords
27 8. Lease agreement
28 9. Lab statements

10. Patient files and business documents (hard copies):

11. State of Nevada and IRS files

(See ECF 13 at 2-3.) These seizures can be broadly classified into three groups: electronic devices, documents, and cash/checks.

The government responds it plans on returning the seized electronic devices once they have been imaged by the FBI. (ECF 15 at 3.) As to documents, the government represents that they contain evidence relevant to the criminal case but have made these available to Dr. Wells for inspection and copying. (ECF 15 at 4.) As to the cash/checks, the government contends that is subject to forfeiture. (*Id.*)

In his Reply, Dr. Wells thanks the government for their willingness to image the electronic devices but requests this court to provide a deadline by which the government is to do so. (ECF 16 at 2.) Dr. Wells seemingly abandons his request for the return of documents (probably based on his ability to inspect and copy), but insists that the cash/checks be returned as they are not “fruits of any criminal conduct, but rather, payment for services remembered and/or working capital.” (*Id.*)

ANALYSIS

At the outset, this court points out that meeting and conferring on this matter would have been ideal, as the bulk of the request has already been mooted through the government's response, indicating it plans to image the electronic devices and allow for the inspection and copying of documents. Likewise, additional information regarding the timing by which the government will finish imaging the electronic devices may have mooted any additional need to seek court intervention. The court strongly encourages Dr. Wells to do so in the future, and to allow sufficient time for the government to respond prior to filing a motion.

The court also points out that Dr. Wells filed a motion and a reply which provides no authority as to why the court should impose a deadline on the government to image the electronic devices or for the proposition that the court can return the cash/checks to him despite the fact that this is subject to a forfeiture claim. LCR 47-3 provides that failure “to include points and

1 authorities in support of the motion constitutes a consent to denying the motion.” The court will
2 deny any future motion on this basis should Dr. Wells not comply with the Local Rules.

3 As to the merits of the motion, the two remaining issues for this court to decide are
4 whether the cash/checks need to be returned and whether to impose a deadline by which to have
5 the government image the electronic devices.

6 “A person aggrieved . . . by the deprivation of property may move for the property’s
7 return.” Fed. R. Crim. Pro. 41(g). Usually, a Rule 41(g) motion is properly denied if the defendant
8 is not entitled to lawful possession of the seized property, the property is contraband, the property
9 is subject to forfeiture, or the government’s need for the property as evidence continues. *United*
10 *States v. Fitzen*, 80 F.3d 387, 388 (9th Cir. 1996). “When a motion for return of property is made
11 before an indictment is filed (but a criminal investigation is pending), the movant bears the
12 burden of proving both that the [property’s] seizure was illegal and that he or she is entitled to
13 lawful possession of the property.” *United States v. Harrell*, 530 F.3d 1051, 1057 (9th Cir. 2008).
14 Dr. Wells does not allege that the seizure was unlawful. Instead, he claims that he has been
15 aggrieved by the deprivation of this property. Given the criminal case is pending, he bears the
16 burden of showing he is entitled to the property.

17 Dr. Wells does not provide any evidence to satisfy the burden he bears. In addition, it is
18 well-settled that the federal government may defeat a Rule 41(g) motion by demonstrating that
19 the property is subject to federal forfeiture. *United States v. Fitzen*, 80 F.3d 387, 389 (9th Cir.
20 1996). The cash/checks Dr. Wells requests be returned are subject to a forfeiture claim at this
21 time.

22 As to the return of the electronic devices, the court requests the government to file a
23 status report within seven days of this order indicating when it believes the imaging will be
24 completed. Should the information provided in that report not be satisfactory to Dr. Wells, he can
25 then renew the motion and provide points and authorities for the proposition that he is entitled to
26 the return of those items within a shorter period of time.

27 IT IS THEREFORE ORDERED that Defendant’s Motion for Return of Property (ECF
28 No. 13) is DENIED.

1 IT IS FURTHER ORDERED that the Government is to file a status report within 7 days
2 indicating when it believes the imaging of Dr. Wells' electronic devices will be complete.
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4 DATED: September 30, 2019

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6 BREND A WEKSLER
7 UNITED STATES MAGISTRATE JUDGE
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